IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8622 OF 2006

Executive Engineer, Ujjani Canal Dvn. 8, Solapur..... Petitioner
V/s
Satish Dattatraya Kulkarni..... ..... Respondent.

Mr.V.D.Patil, Adv. for the petitioner.

Mr.A.S.Kulkarni, Adv. For the respondent.

CORAM: A.P. DESHPANDE, J.
29.3.2007

PC:

Rule.

Rule made returnable forthwith.

By consent of parties taken up for final hearing.

The Executive Engineer, Ujjani Canal Division 8, Solapur has challenged the judgment and order passed by the Industrial Court. The petitioner passed an order directing to recover the sum of Rs.24,775/- from the present respondent and the legality and validity of the said order came to be challenged by respondent by filing complaint before the Industrial Court. The complaint was filed under items 5, 9 and 10 of Schedule IV of M.R.T.U. & PULP Act, 1971. The respondent had also filed an application u/s.30 sub-section (2) and claimed interim relief. The said application was partly allowed and the present petitioner was restrained from recovering more than Rs.5000/- from the respondent. It is the case of the present petitioner that

the respondent and three other watchmen were on duty when there was theft of a tanker. Though at later point of time tanker was recovered, various parts thereof were missing and the aggregate value of damage caused to the tanker on account of missing parts was valued approximately in the sum of Rs.99,100/- and holding the respondent along with three other watchmen guilty the order for recovery of the amount was passed by the petitioner against the respondent. According to the petitioner the petitioner did hold an inquiry into the acts of misconduct in the nature of negligence and after holding an inquiry the order was passed which was challenged before the Industrial Court. The record reveals that the petitioner had not filed written statement before the Industrial Court and the Industrial Court passed an order to proceeded without written statement. Ultimately the Industrial Court passed the final order which is challenged by the petitioner in this writ petition. The final order passed by the Industrial Court is very strange and it is difficult to term it as final order. The final order reads thus:

> "The Respondent is not an Industry. The Respondents are directed not to deduct the amount from the wages of the Complainant, without holding an inquiry and its findings."

The impugned order is pregnant with inherent contradictions in as much as the first sentence observes that the respondent is not an industry and if it is not an industry, obviously the Industrial Court will have no jurisdiction to hold that the respondent has committed unfair labour practice and if no such finding is recorded no relief can be granted by the Industrial Court. The impugned order is devoid of any facts, reasons and conclusions. The order,

to say the least, is unreasoned cryptic order which is wholly illegal and cannot be sustained. The impugned order does not satisfy the power of minimum test of judicial order, besides the fact that having held that the respondent is not an industry, the Industrial Court could not have proceeded further in granting any relief in favour of the respondent. On the face of the impugned order yhe same is unsustainable in law. Both the learned counsel appearing for respective parties concede that the impugned order is wholly illegal and unsustainable and both the learned counsel join in the prayer to set aside the order and seek remand of the matter for appropriate adjudication.

2. At this stage, it may not be out of place to mention that after passing of the said final order the petitioner moved an application seeking review of the same but the review has been rejected on the ground that there are no powers of the review with the Industrial Court and review powers being creature of statute, in the absence of such power Industrial Court could not have reviewed the impugned order. In the result the impugned order dated 8.8.2003 so also order dated 6.7.2006 in review application are set aside. The matter is remitted back to the Industrial Court for *de novo* inquiry and decision of the case. The Industrial Court shall afford opportunity to both the parties to participate in the proceedings and after hearing parties shall proceed to decide the complain on merit in accordance with law. The Industrial Court shall consider the written statement, if so filed by the present petitioner, within four weeks from today. Rule made absolute in above terms.

3. Record and proceedings be returned to the Industrial Court **Forthwith.**

29.3.07.